IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6037 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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H B BARAIYA

Versus

DIVISIONAL CONTROLLER

Appearance:

MR JAGDISH H MEHTA for Petitioner

MR HARDIK C RAWAL for Respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/04/2002

ORAL JUDGEMENT

Heard the learned advocate Mr. J.H.Mehta appearing on behalf of the petitioner and learned advocate Mr. Hardik C. Rawal appearing on behalf of the respondent-corporation. Father of the petitioner was working as a conductor in Mahuva Division. His base number was 3688. The charge sheet dated 27th May, 1988

was served to the father of the petitioner and ultimately father of the petitioner was dismissed from service. The said dismissal was challenged by the father of the petitioner by filing reference being Reference (L.C.B.) No.202 of 1989 before the Labour Court, Bhavnagar. The service of the father of the petitioner was terminated on 29th November, 1988. During the pendency of the said reference, father of the petitioner was expired on 13th February, 1990. The Labour Court vide award dated 21st December, 1991 granted back wages for the period 29th November, 1988 to 13th February, 1990, meaning thereby the Labour Court has set aside the dismissal order passed by the competent authority. Therefore, normally father of the petitioner was entitled reinstatement in service, but because he expired on 13th February, 1990, the Labour Court had granted back wages of interim period up to the date of death of the father of the petitioner. Thereafter, petitioner has approached to the respondent-corporation with a request to give him compassionate appointment as per the settlement arrived at between the union and the corporation. His application was been scrutinized by the respondent-corporation and his request was rejected by the Divisional Controller, Bhavnagar, by letter dated 20th May, 1993, only on the ground that as per the prevailing rules of the corporation, the application of the petitioner dated 7th September, 1992 is rejected. This Court issued rule on 12th October, 1994, making it returnable on 26th October, 1994.

2. Learned advocate Mr. Mehta has submitted that the respondent-corporation has rejected the application of the petitioner for compassionate appointment without giving any reason in support of its conclusion. It is not known to the petitioner that why his application has been rejected. When the petitioner is not known why his application is rejected, how he can approach to the higher authorities to challenge the order passed by the respondent-corporation. Therefore, learned advocate for the petitioner has submitted that the non-speaking order passed by the respondent-corporation is required to be quashed and set aside.

3. Learned advocate Mr. Raval on behalf of the respondent has submitted that the the application of the petitioner is not according to the rules of the corporation and it is not required to be accepted by the corporation and, therefore, the respondent-corporation has rightly rejected his application. He, therefore, submitted that there is no need to give reason for such conclusion.

4. I have considered the submissions made by both the learned advocates. According to my opinion, when the respondent-corporation has rejected the application considering the fact that the application filed by the petitioner according to the prevailing rules cannot be accepted, such a vague and non-speaking order amounts to non-application of mind on the part of the respondent-corporation. It is the duty of the respondent-corporation to give reasons why and on what ground the application of the petitioner is rejected so that the petitioner can challenge such order before the higher forum. In absence of reasons in the order, it is very difficult for the petitioner to challenge the said order. Therefore, the order passed by the Divisional Controller, Bhavnagar, dated 20th May, 1993, is required to be quashed and set aside.

5. In the result, the present petition is allowed. The order passed by the Divisional Controller, Bhavnagar, dated 20th May, 1993 is hereby quashed and set aside with a direction to the petitioner to file a detailed representation to the Chairman of the respondent-corporation pointing out that his father was working as a conductor in Mahuva Division and he was dismissed from service on 29th November, 1988 and reference (L.C.B.) No.202 of 1989 was decided in favour of the father of the petitioner and dismissal of the father of the petitioner was already set aside by the Labour Court and granted back wages till the date of death of the father of the petitioner. Therefore, such order of granting back wages impliedly indicates that father of the petitioner was reinstated in service and, therefore, on the date of death of father of the petitioner, he was in service and on that line the case of the petitioner is required to be considered by the corporation.

6. The petitioner is directed to make a detailed representation to the Chairman of the respondent-corporation along with copy of this order within a period of one month from the date of receiving copy of this order. The Chairman of the respondent-corporation shall decide such representation in light of the observation made by this Court and shall pass an appropriate and speaking order according to the rules within a period of three months from the date of receiving representation from the petitioner. Accordingly rule is made absolute. No order as costs.

(H.K.Rathod, J.)

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